

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Docket No. FMCSA-2000-7017

SAFETY REQUIREMENTS FOR OPERATORS OF SMALL PASSENGER-CARRYING COMMERCIAL MOTOR VEHICLES USED IN INTERSTATE COMMERCE

COMMENTS OF THE AMALGAMATED TRANSIT UNION
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

APRIL 11, 2001

The Amalgamated Transit Union (ATU), which represents over 170,000 members maintaining and operating bus, light rail, ferry, over-the-road bus, school bus and paratransit vehicles in the United States and Canada, applauds the efforts of the Federal Motor Carrier Safety Administration (FMCSA) in recognizing the need for safety regulations of commercial passenger vehicles carrying between 9 and 15 people, including the driver. The rule proposed by the FMCSA would apply *select* federal motor carrier safety regulations (FMCSRs) to for-hire, commercial passenger van operators operating interstate at a distance of at least 75 air miles. In addition, the FMCSA issued a final rule requiring all for-hire, interstate commercial passenger van operations, regardless of distance traveled to comply with certain reporting and identification requirements in an effort to monitor the safety of these small passenger carrying vehicles. These two actions by the FMCSA are an important step towards improving the service and safety of these commercial passenger vans, which are transporting a growing percentage of the traveling public.

While the ATU generally supports the rule as proposed by the FMCSA, an increasing body of evidence supports our view that *more needs to be done* to adequately address the unsafe

operation of *all* commercial passenger vans providing both intrastate and interstate service. As acknowledged by the FMCSA, the available accident data, although severely limited, is nonetheless “alarming and suggests the need for action to improve the operational safety of this group of motor carriers” (66 FR 2768). As such, the ATU strongly recommends the following five changes to the proposed rule:

- (1) **FMCSRs should be made applicable to all for-hire, commercial passenger vans *regardless of whether compensation is direct or indirect.***
- (2) **FMCSRs should be made applicable to *all commercial passenger vans operating to and from Mexico and the United States.***
- (3) **FMCSRs should be made applicable to *all* for-hire, motor carriers operating small passenger-carrying vans interstate, *irrespective of the distance traveled.***
- (4) ***All* FMCSRs, including commercial driver’s license (CDL) and drug and alcohol testing requirements, should be made applicable to covered commercial passenger vans.**
- (5) **The FMCSA should make the adoption and enforcement by States of compatible safety regulations applicable to commercial vans operating in *intrastate*, as well as interstate, commerce, a condition of participation in the Motor Carrier Safety Assistance Program (MCSAP).**

The ATU fully supports those provisions of the proposed rule concerning the transportation of migrant workers and the applicability of safety fitness procedures to operators of small passenger-carrying vans, as well as the proposed implementation schedule.

**FMCSRS SHOULD BE APPLIED TO ALL FOR-HIRE COMMERCIAL PASSENGER VANS,
REGARDLESS OF WHETHER COMPENSATION IS DIRECT OR INDIRECT**

When Congress amended the definition of commercial motor vehicles to include those vehicles designed or used to transport between 9 and 15 passengers *for compensation*, it is clear the intent was to exempt only those large van operations being run by not-for-profit entities, such as churches and social service organizations, that provide transportation services free-of-charge for the benefit of their members or a select population in the community. There is no evidence that Congress intended to include within that exemption transportation services, such as hotel and rental car shuttle services and professional whitewater river rafters, that provide transportation as part of a total package charge. In fact, at the time Congress expanded the definition of commercial motor vehicle to include such operations, the interpretation of “for compensation” and “for-hire” adopted by the DOT *expressly* included “any business entity that assesses a fee, monetary or otherwise, directly or indirectly for the transportation of passengers,” including “[w]hitewater river rafters; hotel/motel shuttle transporters; rental car shuttle services, etc.” (62 FR 16370, 16407).

If the FMCSA, however, maintains its position set forth in the proposed rule that only those entities that are *directly* compensated for transportation services should be covered, we urge the Agency to then adopt one of the alternative definitions provided by Greyhound Lines, Inc. in its comments on the proposed rule. Specifically, Greyhound suggests that the regulations be applied to transportation for compensation in smaller vehicles provided by entities that either “hold themselves out to the public as providers of transportation services” or “are primarily engaged in providing surface transportation.” We prefer the latter formulation, but either one would provide a clearer and more precise definition of the regulated class than the “directly” compensated test, which would allow organizations to avoid regulation by masking the transportation fee within a “total package charge” that includes other incidental services.

FMCSRS SHOULD BE APPLIED TO ALL COMMERCIAL PASSENGER VANS

OPERATING TO AND FROM MEXICO AND THE UNITED STATES

Section 212 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) requires the FMCSA to make the safety regulations applicable to camioneta operations - those that involve transporting passengers from Mexico to the United States and vice versa. However, the FMCSA, in its proposed rule, has chosen not to cover all such camioneta operations and has, instead, chosen only to cover those that travel a distance of greater than 75 miles. This is a mistake, especially in light of the decision of a NAFTA arbitration panel issued on February 6, 2001, that will likely lead to an opening of the U.S.-Mexico border to an even greater flow of camionetas. While the Panel decision only concerns cross-border trucking - specifically finding that the U.S. had violated NAFTA by its refusal to fully open the border to Mexican-owned trucks - the current administration has signaled that any decision to open the border to Mexican trucks will also likely open the border to passenger carriers.

Because of the dangers posed by a possible increase in camioneta traffic entering this country from Mexico, the ATU **strongly** urges the FMCSA to fully comply with the recommendation of Congress and make *all* FMCSRs applicable to *all* for-hire, commercial passenger vans, designed or used to carry 9 to 15 passengers, including the driver, from Mexico to the United States and vice versa.

FMCSRS SHOULD BE APPLIED TO ALL COMMERCIAL PASSENGER VANS, IRRESPECTIVE OF THE DISTANCE TRAVELED

According to the FMCSA's own data, in 1998, there were 49 fatalities involving intercity bus operations. (FMCSA, Motor Carrier Safety Progress Report, January 2000). In the same year, the agency has estimated that there were **1,714 fatalities** involving large vans. (66 FR 2770). After *severely limiting* the existing data to those accidents that occurred during non-rush hours and those vans that were *actually* transporting at least 9 passengers *at the time of the accident*,

the agency determined that there were **at least 36 fatal accidents** (number of fatalities unknown), with a possible 1,099 additional fatal accidents that involved large vans that were not carry 9 or more passengers at the time of the accident, but nonetheless may have been designed to carry such a passenger load. While this data obviously has its limitations, one cannot dispute that these commercial passenger vans are far more dangerous than intercity motor coaches. These vans result in **far more** fatalities than intercity motorcoaches, even though they carry only a fraction of the number of intercity bus passengers.

Despite this alarming record, the FMCSA has chosen to restrict the application of FMCSRs to only those commercial passenger vans traveling interstate and more than 75 miles. No similar distance restriction applies to intercity motorcoach operations. The Agency has based this restriction on its finding that 63 percent of the fatal accidents involving large vans occurred over 100 miles from the drivers' residence. According to this reasoning, 37 percent of the fatal accidents, equaling approximately 419 fatal accident, do not evidence a serious safety risk necessitating application of the FMCSRs! Surely, given the DOT's advocacy for auto recalls and airline and rail safety measures based on much lower numbers of personal injuries and deaths, this standard cannot withstand scrutiny.

Simply put, commercial passenger vans traveling less than 75 miles do pose a significant safety risk and the FMCSA should address this risk by making the proposed rule applicable to ***all commercial passenger vans designed to transport between 9 and 15 persons***, irrespective of the distance traveled.

**ALL FMCSRS, INCLUDING CDL AND DRUG AND ALCOHOL TESTING REQUIREMENTS,
SHOULD BE APPLIED TO COVERED COMMERCIAL PASSENGER VANS**

The FMCSA asserts that commercial passenger van operations “have similar operational characteristics as intercity motor coach businesses and should be required to meet similar standards of safety.” (66 FR 2772). Despite this, the agency has opted **not** to apply all of the same safety standards to the covered van operations, specifically exempting CDL and controlled substance and alcohol testing regulations. This exemption is contrary to the instruction of Congress in Section 212 of MCSIA, which directs the FMCSA to apply the “Federal motor carrier safety regulations” to “those commercial vans operating in interstate commerce outside commercial zones that have been determined to pose serious safety risks.” **Nowhere is this mandate does Congress suggest that certain safety regulations be exempted.**

The importance of the CDL requirements and the drug and alcohol testing provisions to the safe operation of all commercial motor vehicles has been recognized by the U.S. and State Governments. The Federal Transit Administration (FTA), for example, has applied its requirements to van service contractors of local transit agencies providing transportation services for elderly and disabled passengers. (49 U.S.C. 5310(e)(1)). Likewise, the U.S. Department of Health and Human Services (HHS), in an effort to address the increasing use of large vans for transporting children to and from school and school-related activities, recently required drivers transporting children to and from Head Start activities to possess a CDL, regardless of the size of the vehicle being used. (66 FR 5296). Most recently, the National Highway Traffic Safety Administration (NHTSA) issued a consumer advisory because of the increased rollover risk of these vans, advising that “it is important that these vans be operated by experienced drivers.” (DOT, Consumer Advisory, April 9, 2001). Further, the State of California has adopted and extended all of the FMCSRs, including CDL and drug and alcohol testing regulations, to intrastate paratransit services.

We strongly urges the FMCSA to follow these examples and **include CDL and drug and alcohol testing regulations** in its final rule covering commercial passenger vans.

**AS A CONDITION OF PARTICIPATION IN THE MCSAP PROGRAM, FMCSA SHOULD
REQUIRE STATES TO ADOPT AND ENFORCE COMPATIBLE SAFETY REGULATIONS
APPLICABLE TO COMMERCIAL VANS OPERATING IN INTRASTATE COMMERCE**

Under the proposed rule, FMCSA would make adoption and enforcement by States of compatible safety regulations applicable to commercial vans operating in **interstate** commerce, a condition of participation in the MCSAP program. The Agency has elected, however, not to require states to adopt similar rules for vans operating **intrastate**. This differs from the FMCSA's treatment of motorcoaches, for which states must adopt compatible intrastate standards as a condition of MCSAP participation. Again, this is contrary to the Agency's stated intention to apply similar standards to commercial passenger vans as those applied to intercity bus operations.

The Agency has justified this decision with data showing that approximately 32 percent of all fatal crashes involving large vans transporting 9 or more passengers at the time of the accident during the past three years occurred in just three States (California, Texas and Florida). This means that **more than two-thirds of all fatal van accidents** occurred in other states. We must establish a national standard similar to that in place for the motorcoach industry.

The ATU strongly urges the FMCSA to address the vast majority of fatal commercial passenger van accidents by making adoption of compatible intrastate safety standards a condition of a State's participation in MCSAP.

COMPLIANCE WITH THE FMCSRS SHOULD BE ACCOMPLISHED AS SOON AS POSSIBLE

FMCSA proposes requiring compliance with the FMCSRs by covered commercial passenger vans 90 days after the effective date of the final rule, 120 days after the date of publication of the final rule. ATU fully supports this implementation schedule. The alarming accident data cited by the FMCSA suggests that it is essential that covered van operations reach compliance as soon as practicable.

FMCSRS SHOULD APPLY TO COVERED COMMERCIAL PASSENGER VANS TRANSPORTING MIGRANT WORKERS

Under the proposed rule, carriers of migrant workers using vehicles designed or used to transport between 9 and 15 passengers, traveling more than 75 miles and who are directly compensated for their transportation services would be required to comply with the FMCSRs, except commercial drivers' license and drug and alcohol testing requirements. With the exception of the distance and "directly" compensated limitations, as well as the exclusion of select (and perhaps the most important) FMCSRs, objections for which were discussed above, the **ATU fully supports** the FMCSA's decision **not** to exclude transporters of migrant workers from the proposed rule. There is no rational reason for allowing less stringent requirements for such operations.

COMMERCIAL PASSENGER VANS SHOULD BE COVERED BY THE SAME SAFETY FITNESS PROCEDURES AND STANDARDS AS OTHER INTERSTATE MOTOR CARRIERS

FMCSA proposes to apply to covered commercial passenger vans the same safety fitness procedures as those applied to other motor carriers, specifically, procedures to determine the safety fitness of motor carriers, to assign safety ratings, to take remedial action when required and to prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a

CMV. The ATU fully supports this proposal. These standards and procedures are essential to effective enforcement of the FMCSRs.

CONCLUSION

In closing, the ATU again commends the FMCSA for moving forward with these needed safety requirements for operators of commercial passenger vans. We respectfully request the FMCSA carefully consider the modifications to the proposed rule discussed in our comments above, particularly with respect to expanding the definition of vehicles covered by the rule and making *all* FMCSRs applicable to those vehicles. Compelling evidence also demands that the agency begin addressing the safety concerns for *intrastate* van operations as well as those for *interstate* operations.